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PLEADING — THEORY OF THE PLEADING. — The plaintiff in his complaint alleged that he and the defendant had made a contract of partnership, and demanded an accounting. The defendant in his answer denied the contract of partnership but admitted that he had contracted to employ the plaintiff. A referee was appointed and he found that there was no partnership but that there was a contract of employment. The court gave judgment for the plaintiff for breach of contract. *Held*, that since the complaint was framed as a bill in equity, and the judgment was in the nature of a judgment at law, the judgment should be reversed. *Jackson* v. *Strong*, 222 N. Y. 149.

For a discussion of the principles involved, see NOTES, page 166.

PUBLIC SERVICE COMPANIES — WHAT CONSTITUTES A PUBLIC USE. — A brewery generating its own electricity for light, heat, and power contracted to sell its surplus under the name of M. O. Danciger and Company to individuals within a radius of three blocks of the brewery. No use was made of the streets or highways; the consumers furnished their own poles and wires; paid for the construction, though the work was usually done by employees of the brewery. Rates were charged in a few instances on the meter basis, the meters belonging to the consumers, but in most instances the charge was governed by a flat rate. Having discontinued service without prior notice, and on refusal to reinstate service, a proceeding was brought before the Public Service Commission who ordered a reinstatement of the service. On appeal to the court, *held*, appeal sustained. *State ex rel. M. O. Danciger & Co.* v. *The Public Service Commission*, 205 S. W. 36 (Mo.) (1918).

For a discussion of the principles involved, see NOTES, page 169.

QUASI-CONTRACTS — RIGHTS ARISING UNDER MISTAKE OF FACT AS TO PRICE. — A corporation made an agreement with the owner of one-half its capital stock to buy him out on the basis of an inventory. The price was set at $13,000. It was then found that an item of $900 had been omitted from the liabilities in the inventory and a consequent overcharge of $450 to the corporation, which now sues to recover that amount. *Held*, the corporation cannot recover at law. *Borough Paper Co.* v. *Scher*, 170 N. Y. Supp. 395 (App. Div.).

The court suggests that the corporation should have gone into equity for reformation. The older decisions held that price like quality was not to be regarded as going to the essence of the contract. *Paulison* v. *Van Inderstine*, 28 N. J. Eq. 306; *Stettheimer* v. *Killip*, 75 N. Y. 282; *Okill* v. *Whittaker*, 1 DeG. & Sm. 83; *Segur* v. *Tingley*, 11 Conn. 134. But in the principal case the inventory was expressly made the basis of the sale and so became itself the subject matter of the contract. And for such cases equity allows rescission. *De Voin* v. *De Voin*, 76 Wis. 83, 44 N. W. 839. See 23 HARV. L. REV. 609–10, 614. Or equity might force the vendor to return the overcharge and let the sale stand. *Lawrence* v. *Staigg*, 8 R. I. 256; *Wirsching* v. *Grand Lodge of Masons*, 67 N. J. Eq. 711, 56 Atl. 713. Then if equity could give relief, an action at law should also lie, since money has been paid under an essential mistake of fact. The authorities, however, are in conflict as the parol evidence rule has been usually held to bar showing the mistake. See WOODWARD, QUASI-CONTRACTS, § 180, and notes; KEENER, QUASI-CONTRACTS, 123, 124. But here there is no difficulty on the parol evidence rule as the inventory was expressly made the basis of the contract price.

RAILROADS — LICENSE TO USE TRACKS — LIABILITY OF LICENSOR FOR NEGLIGENCE OF LICENSEE. — Under a statute authorizing railways to make joint running arrangements with any other railway, the defendant railway corporation allowed another railway to run trains over the licensor's tracks to fill a gap in the licensee's system. While using the defendant's tracks, the

licensee's employees negligently damaged the plaintiff. *Held*, that the licensor is liable. *Sorenson* v. *Chicago, R. I. & P. Ry. Co.*, 168 N. W. 313 (Iowa).

Where there is no statutory authorization, the lessor of a railroad is generally held for the liability of the lessee in operating the road. *Hays* v. *Railroad*, 20 C. C. A. 52, 74 Fed. 279. If there is such authorization, some courts hold that this carries with it exemption by necessary implication. *Hahs* v. *Cape Girardeau & C. R. Co.*, 126 S. W. 525 (Mo.); *Vadas* v. *Pittsburg M. & Y. R. Co.*, 203 Pa. 41, 79 Atl. 166. See 20 HARV. L. REV. 334. However, it would seem that mere permission to do acts which otherwise might be illegal does not absolve the lessor by necessary implication. *Clinger's Adm'x* v. *Chesapeake & O. Ry. Co.*, 33 Ky. Law R. 86, 109 S. W. 315. In the principal case it was a license to use the tracks. In such a case the licensor has, in absence of statutory authorization, been held liable. *Jefferson* v. *Chicago & N. W. Ry. Co.*, 117 Wis. 549, 94 N. W. 289; *Pennsylvania Co.* v. *Ellett*, 132 Ill. 654, 24 N. E. 559; *Chicago & E. R. Co.* v. *Meech*, 163 Ill. 305, 45 N. E. 290. If there is statutory authority some courts might make a distinction between a lease and a license of joint user. See 1 ELLIOTT, RAILROADS, 2 ed., § 477. It is submitted, however, that the principal case rests the lessor's or licensor's liability on its true basis. The franchise has imposed duties upon the railway, the occupier of the premises, to operate its road carefully. The railway may carry them out through lessees or licensees, but it must see to it that no one is injured by any breach of duty or negligent use, unless a statute expressly exempts it from liability. *Braslin* v. *Somerville Horse R. Co.*, 145 Mass. 64, 13 N. E. 65; *Chicago & Grand Trunk Ry. Co.* v. *Hart*, 209 Ill. 414; 70 N. E. 654; *Clinger's Adm'x* v. *Chesapeake & O. Ry. Co.*, *supra*. But see 20 HARV. L. REV. 334. An analogy is found where the occupier of premises is held liable for the negligence of an independent contractor where he is charged with a "non-delegable duty." *Doll & Sons* v. *Ribetti*, 121 C. C. A. 621, 203 Fed. 593; *Strickland* v. *Montgomery Lumber Co.*, 171 N. C. 755, 88 S. E. 340; *Covington & Cincinnati Bridge Co.* v. *Steinbrock*, 61 Ohio St. 215, 55 N. E. 618.

RELIGIOUS SOCIETIES — JURISDICTION OF COURTS — PROPERTY RIGHTS. — The constitution of a religious society provided that in case of a schism those adhering to the doctrines of the Lutheran Synod of Missouri should hold the property. The defendants, being a majority of the society, formed a separate organization affiliated with the Lutheran Synod of Iowa, certain essential doctrines of which are repudiated by the Missouri Synod. On demurrer to these facts the right of the defendants to the church property turned on whether it was necessary for some ecclesiastical authority first to determine the doctrinal question involved. *Held*, that the demurrer be sustained. *Bendewald* v. *Ley*, 168 N. W. 693 (N. D.).

Although civil courts in this country will not interfere in purely ecclesiastical matters they will take jurisdiction to determine controverted claims to church property. *Hendrickson* v. *Decow*, 1 N. J. Eq. 577; *Rottman* v. *Bartling*, 22 Neb. 375, 35 N. W. 126; *Fussell* v. *Hail*, 233 Ill. 73, 84 N. E. 42. Accordingly, where such controversy arises out of a division in a religious society, civil courts will ascertain which of the rival factions continues the original organization and will award it the property. *Hayes* v. *Manning*, 263 Mo. 1, 172 S. W. 897; *Mack* v. *Kime*, 129 Ga. 1, 58 S. E. 184; *Horsman* v. *Allen*, 129 Cal. 131, 61 Pac. 796. In a congregational society, where majority rule prevails, the church property is usually given to the numerical majority of the members. *Bouldin* v. *Alexander*, 15 Wall. 131; *Fernstler* v. *Seibert*, 114 Pa. 196, 6 Atl. 165; *Gipson* v. *Morris*, 31 Tex. Civ. App. 645, 73 S. W. 85. But if the society belongs to an ecclesiastical system, the decision of the highest church judicatory on doctrinal matters is generally accepted as conclusive by the civil courts. *Watson* v. *Jones*, 13 Wall. 679; *Presbyterian Church* v. *Cumberland Church*, 245 Ill. 74,